

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 51-006-13-1-4-00009
Petitioner: Bear Lake Resort & Hunt Club, LLC
Respondent: Martin County Assessor
Parcel: 51-05-17-100-005.000-006
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. The property under appeal is a 123.02-acre parcel, 120.02 acres of which are classified forest. It has a structure the parties referred to alternately as a mobile office building, a police trailer, a construction trailer, and a hunting lodge. The property is located at 19420 Indian Springs Road in Shoals.
2. Bear Lake Resort & Hunt Club, LLC filed a Form 130 petition challenging its 2013 assessment. On December 10, 2014, the Martin County Property Tax Assessment Board of Appeals issued its determination valuing the property as follows:

Land: \$14,100	Improvements: \$68,800	Total: \$82,900
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3. Bear Lake timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. It requested the following assessment:

Land: \$6,000	Improvements: \$0	Total: \$6,000
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4. On April 25, 2017, Jacob Robinson, our designated administrative law judge, held a hearing. Neither he nor the Board inspected the property.
5. Bear Lake appeared by member Paul E. Rhodes. Kirk Reller appeared as a local government representative for the Assessor. Mr. Rhodes, Mr. Reller, and Martin County Assessor Carolyn S. McGuire were sworn as witnesses.

RECORD

6. The official record for this matter contains the following:
 - a. A digital recording of the hearing

b. Exhibits

Petitioner Exhibit A:	Property Tax Review for LLC - Statement of Facts
Petitioner Exhibit B:	2013 pay 2014 property tax statement and property record card printed 04/28/2014
Petitioner Exhibit C:	Auction receipt dated 08/04/2009
Petitioner Exhibit D:	Design Specifications
Petitioner Exhibit E:	Aerial maps of the subject property
Petitioner Exhibit F:	Copies of photographs and information for Indian Springs Resort
Respondent Exhibit 1:	Property record card printed 04/18/2017
Respondent Exhibit 2:	Form 115 determination dated 12/10/2014
Respondent Exhibit 3:	Photograph of lodge and deck
Respondent Exhibit 4:	Photograph of lodge and lean-to
Respondent Exhibit 5:	Standard of Verification and Adjustment of Sales
Respondent Exhibit 6:	Slide titled "Sales Validation Instructions"
Respondent Exhibit 7:	Sales Validation Codes
Respondent Exhibit 8:	Real Estate listing for 19420 Indiana Springs Road and photographs of lodge's interior
Board Exhibit A:	Form 131 petition
Board Exhibit B:	Hearing notice
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions

SUMMARY OF CONTENTIONS

7. Bear Lake's case:

- a. Bear Lake's appeal focuses on the three-acre area surrounding the structure that it uses as its hunting lodge. The property has no mail service and nobody lives there. Bear Lake does not charge hunting fees, and there is no commercial activity at the property. It is for rest and relaxation. *Rhodes testimony; Pet'r Exs. A, E.*
- b. The lodge is a mobile office that Bear Lake's majority member, Paul Rhodes, bought for \$10,000 at a 2009 auction. The design specifications say that it is to be used as a "construction site trailer." It originally had nine offices with an open area in the middle. Before the auction, the Indianapolis Airport Authority used it as space for airport police. *Rhodes testimony; Pet'r Exs. C-D.*
- c. Mr. Rhodes paid \$11,000 to move the building to the subject property. The club installed a gravel parking lot, drilled a 50' water well, put in a "very minimal" septic system, and cleared an area as a future construction site for a house. According to Mr. Rhodes, Bear Lake did not install a foundation for the lodge. Mr. Rhodes

- estimated that the site work cost \$50,000, although he originally testified that it could have been between \$50,000 and \$100,000. *Rhodes testimony; Pet'r Exs. A-C.*
- d. Bear Lake converted one office into a laundry room, another into a mudroom, and the rest into bedrooms for friends and family. The lodge has only two bathrooms, although the property record card says it has four. *Rhodes testimony; Pet'r Ex. B.*
 - e. Mr. Rhodes put a license plate on the lodge and paid excise taxes when he originally had it moved to a different location in Martin County and again when he had it moved to its present location. He does not pay excise tax every year, because he does not register it every year. As he explained, he has no plans to “jump in that building and go wherever I want.” The county cannot charge real estate taxes if the lodge is subject to excise tax, because that would amount to double taxation. Hamilton County does not tax structures like the lodge. Mr. Rhodes does not pay real estate taxes on three other construction trailers in Martin County, because as he testified, “you can put a license plate on them and drive them around.” *Rhodes testimony; Pet'r Ex. D.*
 - f. Bear Lake “filed” taxes on its lodge in the first year it was usable. It has not filed taxes since then because there is no commercial activity. *Rhodes testimony.*
8. The Assessor’s case:
- a. The assessment is presumptively accurate. *Reller testimony; Resp't Ex. 1.*
 - b. Bear Lake listed the subject property (together with additional land) for sale in 2015. The asking price was \$1,357,000. The listing described the property as having a seven-bedroom, two-bath lodge with a large kitchen, living room, billiard area, mudroom and laundry. The lodge also has a small wooden deck and a small lean-to attached to it. Although the listing was from after the assessment date and the property did not sell, it is still instructive. *Reller testimony; Resp't Exs. 3-4, 8.*
 - c. Mr. Rhodes bought the lodge 3½ years before the valuation date at what the Assessor assumes was a liquidation auction, given that Commercial Liquidators of America conducted it. There is nothing to show whether the auction was an absolute auction or how well it was advertised or attended. Both the International Association of Assessing Officers and the Department of Local Government Finance (“DLGF”) advise caution when validating auction sales. They recommend considering all absolute auctions invalid. For an auction to be considered valid, those sources require it be well advertised and attended. They also require the seller to have a minimum bid or the right of refusal on all bids (with reserve). In any case, the cost to move the building to the property and convert it into a lodge (including the cost to bring rock to the site and install electric and water service and a septic system) all contribute to the property’s value. *Reller testimony; Resp't Exs. 5-7.*

- d. The lodge is real property because it is placed on Bear Lake's real estate. Contrary to Mr. Rhodes' assertions, Bear Lake was not subjected to double taxation. It only paid excise tax twice, and both times were before the assessment date at issue in this appeal. *Reller testimony*.

BURDEN OF PROOF

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.
10. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the prior year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If she fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). But the burden shifting statute may not apply if the assessment under appeal was based on structural improvements, zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c).
11. Although the assessment increased by more than 5% between 2012 and 2013, the lodge building was not assessed in 2012 (the assessment had been for land only). Bear Lake agreed that it bore the burden of proof.

ANALYSIS

12. Bear Lake primarily argued that the lodge was subject to the motor vehicle excise tax and that assessing and taxing it as real property therefore impermissibly subjected Bear Lake to double taxation. According to the property record card, Mr. Rhodes moved the lodge to the property in 2009, which was the last time that either he or Bear Lake paid excise tax on it.¹ Mr. Rhodes believed that the lodge was still subject to the excise tax in later years. But he did not point to any authority for that proposition, and we will not make

¹ Although Mr. Rhodes testified that he "filed" taxes on it the first year Bear Lake actually started using the lodge, it is unclear what type of taxes those were.

Bear Lake's case for it.²

13. Instead, the record supports the inference that the lodge was real property subject to ad valorem taxation.³ Real property includes “a building or fixture situated on land located within this state.” I.C. § 6-1.1-1-15(2). The DLGF has also promulgated a rule addressing how to classify property as real or personal for purposes of taxation:

(a) The following guide is intended to assist in the identification of property as either real or personal. The use of a unit of machinery, equipment, or a structure determines its classification as real or personal property. If the unit is directly used for manufacturing or a process of manufacturing, it is personal property. If the unit is a land or building improvement, it is real property.

...

(c) Buildings – Real.

Structural and other improvements to buildings, including foundations, walls, floors, roof, insulation, stairways, partitions, loading and unloading platforms and canopies, areaways, systems for heating, air conditioning, ventilating, sanitation, fixed fire protection, lighting, plumbing, and drinking water, building elevators and escalators.

50 IAC 4.2-4-10.

14. Contrary to Mr. Rhodes' claim, the photographs offered by the Assessor show that Bear Lake placed the lodge on what appears to be a permanent foundation with crawlspace access. It also installed a gravel parking lot, a deck, and a small lean-to; drilled a water well; and added a septic system. And it renovated the lodge's interior to convert the former office space into a laundry room, a mudroom, two bathrooms, and seven bedrooms. Bear Lake admittedly uses the structure as a fully functional hunting lodge and sleeping quarters for its members, their family and friends.
15. But simply finding that the lodge was subject to taxation as real property does not end our inquiry. Bear Lake argued that the assessment was too high because it paid only \$10,000 for the lodge.

² Perhaps Bear Lake was relying on Ind. Code § 6-6-5-2. In 2013, that statute imposed an annual license excise tax on vehicles in lieu of the ad valorem property tax levied for state and local purposes, regardless of whether the vehicle was actually registered. I.C. § 6-6-5-2 (2013 supp.). Vehicle, in turn, was defined as “a vehicle subject to annual registration as a condition of its operation on the public highways pursuant to the motor vehicle registration laws of the state.” I.C. § 6-6-5-1(a). But the chapter explicitly did not apply to “mobile homes,” which it defined as “nonself-propelled vehicle[s] designed for occupancy as a dwelling or *sleeping space*.” I.C. § 6-6-5-1(b) and (i) (emphasis added) (2008 supp.). Even if the lodge generally met the definition of vehicle (which Bear Lake made no effort to show), it appears to have been designed as a sleeping space, at least as it existed in 2013 after Bear Lake's renovations. Thus, Ind. Code § 6-6-2-2 would not have applied.

³ Bear Lake did not argue that the lodge is personal property under Ind. Code § 6-1.1-1-11. Nor did it address whether the building is a mobile home within the meaning of 50 IAC 3.3-2-3.

16. Indiana assesses real property based on its “true tax value,” which is determined under the DLGF’s rules. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). “True tax value” does not mean either “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). In accordance with these statutory directives, the DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.
17. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. MANUAL at 2. In an appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP-compliant market value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 assessments, the valuation date was March 1, 2013. I.C. § 6-1.1-4-4.5(f).
18. Mr. Rhodes bought the lodge more than three years before March 1, 2013. Bear Lake therefore needed to explain how that sale price related to the lodge’s value as of that valuation date. Because Bear Lake failed to do so, the sale price is not probative of the lodge’s true tax value.
19. Bear Lake also failed to account for any of the costs involved in transforming what was originally built as a construction-site trailer into a useable hunting lodge and sleeping quarters.⁴ Although Mr. Rhodes estimated that the site improvements cost \$50,000, he offered nothing to substantiate that claim. And he initially estimated a range of \$50,000-\$100,000 before settling on the lower value, which gives us little confidence in his final estimate.
20. Thus, the 2009 sale price is not probative of the lodge’s true tax value. And Bear Lake failed to offer any other market-based evidence. Consequently, we find that Bear Lake failed to make a prima facie case for changing the assessment.

FINAL DETERMINATION

In accordance with the above findings and conclusions, we find for the Assessor and order no change to Bear Lake’s 2013 assessment.

⁴ The property record card introduced by Bear Lake indicates that the lodge has four bathrooms instead of two, but Bear Lake did not attempt to explain how this affects the building’s value. The Assessor offered a more recent card on which she had corrected the data to reflect only two bathrooms.

ISSUED: July 12, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.